REMARKS

Reconsideration of the above-identified patent application is respectfully requested.

Claims 1-5 and 13-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,009,372 to Baker et al. (Baker) in view of U.S. Patent No. 5,398,285 to Borgelt et al. (Borgelt) and further in view of U.S. Patent No. 6,488,585 to Wells et al. (Wells). Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Baker, Borgelt and Wells as applied to claims 1-5, and further in view of U.S. Patent NO. 6,173,402 to Chapman. Claims 16-19 and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wells in view of Borgelt. Claim 23 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Wells in view of Borgelt as applied to claim 16, and further in view of Chapman. Claim 28 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Wells in view of Borgelt as applied to claim 16, and further in view of Baker. Claims 6, 10, 20 and 24 are objected to as being dependent upon a rejected base claim, but are indicated as allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. For at least the following reasons, applicants respectfully traverse these rejections.

Applicants assert that the cited references fail to teach or suggest at least one limitation of each of applicant's independent claims 1 and 16. As per claim 1, for example, this claim requires "obtaining a software identification code relating to at least

a portion of software information to be downloaded into said embedded system."
Applicants assert that the cited Borgelt reference does not disclose this limitation as the Examiner contends. Borgelt discloses a technique for creating a password to enable a software program that is already resident within an embedded system. According to the Borgelt reference, a password is formed as a combination of a hardware ID (107) associated with a base station (101) and an embedded software code associated with the software program embedded within the base station (101); see col. 3, lines 32 - 36 and lines 53 - 58, and col. 4, lines 28 - 48. The password is then used to enable the embedded software program for operation; see col. 5, lines 14 - 20. The embedded software code may be a feature mask that contains a single bit for every available feature of the embedded software program so that if the bit corresponding to a feature is set, the customer is authorized to use that particular feature; col. 3, lines 58 - 63. The embedded software code may also include other fields such as a software version number; col. 4, lines 21 - 22.

The Borgelt system requires the software program to be pre-existing in the base station (101), and the software code or ID is formed from information associated with this embedded software program. In contrast, applicants' claim 1 requires the software ID to relate to software information that is not resident within the embedded system, but is instead resident within some other system. In fact, creation of a password from such a software ID and the hardware ID associated with the service/recalibration tool or the embedded system is used to allow or disallow subsequent downloading of the software information based on this created password. The Borgelt reference fails to show,

disclose, teach or suggest that the software code or ID used to form the password may relate to any software program other than one that already exists in the base station (101), and Borgelt accordingly teaches away from applicants' claimed invention by requiring the software code or ID to relate to a pre-existing, embedded software program. The remaining references of record, either alone or in combination, likewise fail to teach or suggest basing a software code or ID that forms part of a password on any software program other than a pre-existing software program embedded within the system that will execute such a software program. Accordingly, the § 103(a) rejection of claim 1 is improper, and withdrawal of this rejection is respectfully requested.

Regarding applicants' remaining independent claim 16, applicants traverse the § 103(a) rejection of this claim for the same reasons set forth above with respect to claim 1. Additionally, claim 16 includes a further limitation requiring the provider of the software information to create the password as a function of the hardware ID (first identifier) and the software ID (second identifier). Borgelt, either alone or in combination with any other reference or record, fails to teach or suggest any such limitation. The § 103(a) rejection of claim 16 is thus improper for at least these two reasons, and withdrawal of this rejection is respectfully requested.

Applicants' independent claims 1 and 16 are believed to be patentably distinct from the references of record as argued hereinabove. Since claims 2-15 are dependent upon claim 1, and claims 17-28 are dependent upon claim 16, these claims are likewise believed to be patentably distinct from the references of record. Claims 1-28 are

4

accordingly in condition for allowance, and such action is solicited. The Examiner is cordially invited to contact the undersigned by telephone to discuss any unresolved matters.

Respectfully submitted,
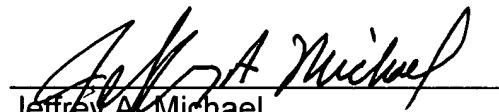
Jeffrey A. Michael
Registration No. 37,394
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204-3335
Telephone: (317) 231-7382
Fax: (317) 231-7433